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OFFICE OF GENERAL
COUNSEL

July 15, 2014

Jeff S. Jordan, Esquire
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 6829 – Senator Ron Johnson, Ron Johnson for Senate Inc., and
James J. Malczewski, as Treasurer

Dear Mr. Jordan:

On behalf of Ron Johnson for Senate Inc. (the “Committee”) and James Malczewski, as Treasurer, and Senator Ron Johnson, this responds to the Complaint received in the above-captioned matter. This complaint stems from a suit filed in January 2014 by Senator Johnson, who is not on the ballot in 2014, in federal district court to halt Members of Congress and their staffs from receiving preferential treatment in their payments for care under the Affordable Health Care Act.

The Complaint alleges that the legal fees for the suit (which the Committee paid pursuant to the advice and approval of the Senate Ethics Committee and consistent with Federal Election Commission precedent) should have been shown as a debt before the invoices for the services were received. This shows a basic misunderstanding of the Federal Election Campaign Act (the “Act”) and Federal Election Commission (“Commission”) rules concerning the distinction between “expenditures” and “disbursements” and the reporting of debt.

While not cited, complainants’ contention that the Committee should have been required to disclose un-invoiced legal fees in connection with official duties is apparently based on the Commission’s regulations at Section 100.112:

Contracts, promises, and agreements to make expenditures. A written contract, including a media contract, promise or agreement to make an expenditure is an expenditure as of the date such contract, promise or obligation is made. (emphasis added).

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July 15, 2014
Page 2

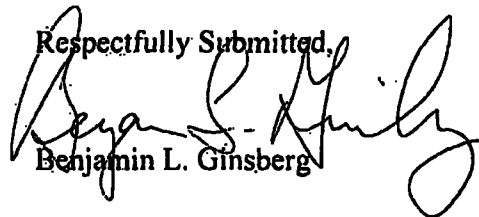
But the language of this Section makes clear that it applies only to expenditures — a term with a limited definition — not to all disbursements.¹ This distinction between “expenditure” and “disbursement” is meaningful. Payments for legal services for a law suit connected to a senator’s official duties do not meet the definition of “expenditure” since they are not “for the purpose of influencing any election for Federal office.” 11 C.F.R. § 100.111(a). In AO 1986-09 (Daniel), the Commission specifically instructed a Member to report his campaign’s reimbursement of legal fees incurred in connection with the discharge of official responsibilities as “Other Disbursements.”

The Commission’s Instructions for Line 17 Expenditures further confirm this reading, listing “expenditures” that are clearly distinguishable from non-election related legal fees: “Examples of operating expenditures are: media advertising, newspaper advertising, salaries, travel, rent and telephones.” By contrast, payments of legal fees are simply “disbursements” which are “any purchase or payment made by a political committee.” 11 C.F.R. § 300.2(d). This is true even if a retainer letter for legal services that caps fees in a matter is somehow a “contract or promise,” since any fee due would not be one that would be made “for the purpose of influencing any election for Federal office”.

Critically, the Committee has correctly reported the payments for legal services on Line 21 of its 2014 July Quarterly FEC Report. The payment was made within 28 days of receipt of an invoice for fees and was paid in full. All this activity occurred during the July Quarterly reporting period so is reported as such. This scenario is common, does not trigger any sort of a special debt reporting rules, and has not been questioned by the Commission previously, whether by the Reports Analysis Division, in an audit, a Matter Under Review or other proceeding.

Accordingly, Respondents respectfully request that the Commission find no reason to believe that a violation has occurred, dismiss this Complaint and close the file.

Respectfully Submitted,


Benjamin L. Ginsberg

¹ The language of FEC’s Candidate Guide, which complainants do explicitly reference and quote, is consistent in this guidance regarding 11 C.F.R. § 100.112, indicating “A written agreement to make an expenditure, such as a media contract, constitutes an expenditure.” *FEC Congressional Candidates and Committees Guide* at 52 (June 2014). Similarly, the section explaining Schedule D repeats the use of this specifically defined term, explaining that “Unpaid bills and written contracts or agreements to make expenditures are considered debts.” *Id.* at 101.